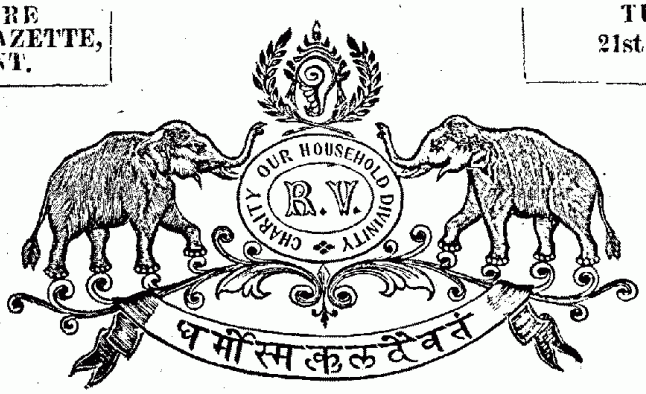
TRAVANCORE GOVERNMENT GAZETTE, SUPPLEMENT.

TUESDAY, 21st June 1898



Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 12 noon, on Thursday the 16th June 1898. / 3rd Mithunom 1073.

PRESENT.

M. R. Ry. K. Krishnaswamy Rao Avergal, Dewan Bahadur., F. M. U., Dewan ... ... *Presiding.*

M. R. Ry. V. Nagam Aiya Avergal, B. A., F. R. H. S.
M. R. Ry. P. Thanu Pillai Avergal, M. A.
Mr. C. J. Maltby.
M. R. Ry. T. Rajaram Row Avergal, B. A.
Mr. I. H. Prince.
Mr. K. Kuruvila, B. C. E.
M. R. Ry. K. Kochu Krishna Marar Avergal, B. A., B. L.

Secretary.—I beg to announce that the Departmental Enquiries Bill passed by the Council on the 21st May 1898, received the Royal assent on the 29th Idem, and has become law as Regulation VI of 1073, with effect from the 1st Chingom 1074.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

Mr. Thanu Pillai.—Two papers of amendments have been circulated. For facility of reference I will combine the two and proceed in the order of the sections of the Code (Regulation V of 1067).

Section 4, Clause (h).

Mr. Thanu Pillai.—I beg to propose that para 2 of this Clause, relating to the definition of 'Pleader' be retained. The Select Committee have proposed the omission of this para for the reasons stated in their report. As I was a member of the Select Committee it may perhaps appear strange that I should come forward with this amendment. Some of the authorities whose opinions were before the Committee had expressed themselves very strongly against the retention of the second para. It was urged that the class of men who appear before the Courts as criminal agents are altogether wanting in the education and status which the calling demands. There is doubtless much truth in this statement; but there are other considerations which render the retention of the provision highly desirable. In many parts of the country, duly qualified practitioners may not be available, or at all events, are not within the reach of the poorer classes. The modification suggested by the Select Committee would have the effect of depriving these classes of what little assistance they could command.

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In the British Code which has recently been thoroughly revised and amended by Act V of 1898, this para is left undisturbed. On reading through the discussions in the Supreme Legislative Council, I find that one of the non-official members, Mr. Anandacharlu, whose large experience as a successful lawyer entitled him to speak with some authority on the subject, went so far as to propose the omission of the words 'with the permission of the Court.' I do not, of course, mean to propose the omission of these words. In England, even a man's wife is sometimes allowed to appear for him. I do not see why we should go beyond the British Indian Legislation in this respect. The section, it will be observed, leaves it entirely discretionary with the Criminal Courts to allow any person to appear as a criminal agent; and there is no reason to suppose that this discretion will not be properly used. I would therefore, in the interest of public convenience, strongly commend the amendment to the Council.

Mr. Kuruvila.—I beg with great pleasure to second the proposition. It seems to me that the convenience of the public should be the chief test in these matters. As for the 'morale' of having a body of criminal vakils in the country, I must confess that their status depends practically upon the Magistrates. If the Magistrates only properly exercise the discretion vested in them, the evils complained of may be avoided. If the Magistrate is above suspicion his vakils also conduct themselves above suspicion. If we insist upon high class vakils being engaged in all cases, we shall be only providing for additional expenditure of money by the people, the majority of whom are poor. If the Select Committee's proposal be adopted, it will be a great hardship to them.

Mr. Prince.—I am not for the amendment now proposed. I was one of the members of the Select Committee and am in a manner responsible for the omission of the second para by the Committee. The Council are aware that the High Court have, with the sanction of His Highness the Maha Rajah, passed certain rules for the enrolment of 'criminal' vakils, and laid down the standard of qualification necessary for them. It will be unfair to the men who have taken the trouble to pass the prescribed examination and get themselves duly enrolled, if we allow the Magistrates to admit non-qualified men also to appear and plead before them. If the present amendment be carried, the rules to which I have just referred will become a dead letter. In England, no doubt, a wife is sometimes allowed to appear for her husband. But it is only in exceptional cases and in consideration of the special relationship between them and their inability to engage counsel. In this country the difficulty of obtaining high class vakils is, I think, removed by the new rule which provides for a class of criminal vakils being duly enrolled. The hardship to the men now practising in the criminal courts may be avoided by the High Court calling for lists of such men with the opinion of the District Magistrates in regard to their status and character and granting sanads to such of them as are in the light of such opinion worthy of being retained.

Mr. Rajaram Row.—I understand Mr. Prince to say that the present class of criminal vakils, that is, such of them as are approved of by the District Magistrates, may be allowed to practise. This would mean that the proposal made by the Select Committee should be brought into force after the existing class has become extinct. I am not at all sure whether such a course would be desirable. Mr. Prince also referred to the hardship that is likely to be caused to the qualified criminal vakils. I do not think the difficulty is either great or appreciable. The rules passed by the High Court have now been in force for 2 years but the number of criminal vakils enrolled under these rules is still very few. Except in the more important towns and the head-quarter stations of Tahsildars, they are not to be found at all. In places like Pattanamtittai and Paravur near Quilon, it is very difficult to get qualified vakils, and the convenience of the public will greatly suffer if we take away the privilege which they enjoy under the existing law. Mr. Thanu Pillai put the case of a wife appearing for her husband. Let us take the converse case of a husband appearing for his wife, which is more likely to arise in this country, and the need for leaving the law undisturbed will become apparent. I therefore support Mr. Than Pillai's amendment.

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Mr. Nagam Aiya.—It is a choice between two evils and my learned friend, Mr. Prince, is for helping his brethren of the bar, that is, the vakils who have passed examinations. I am, on the other hand, having been long associated with the public and knowing their condition and hardships well, naturally inclined to choose that which is more convenient to the public. I believe Mr. Thanu Pillai's amendment will secure the convenience of the public. Para 2 should be retained. I therefore vote for it.

The motion was put to the vote and carried by majority.

Section 4, Clause (i.)

Mr. Thanu Pillai.—I beg to propose that the words "or place" be inserted between "post" and "declared," in the definition of "Police-station." The object is simply to amplify the expression. This is taken from the British Act. The word 'place' occupies a larger area than the word "post."

Seconded by Mr. Kochu Krishna Marar.

Carried.

Section 5.

Mr. Thanu Pillai.—I beg to move the following amendment in this section.

Insert the word "investigated" between "shall be" and "inquired" in the 1st and 3rd lines; omit the word "and" before "tried" in the 2nd and 4th lines; insert the words "and otherwise dealt with" between "tried" and "according" in the 2nd and 4th lines; insert the word "investigating" between "of" and "inquiring;" omit "or" before "tried," and add the words "or otherwise dealing with" between "trying" and "such" in the 6th line.

Mr. Thanu Pillai.—The object of the amendment is to make the provisions of the Code applicable to police investigations and miscellaneous proceedings.

Seconded by Mr. Nagam Aiya.

Carried.

Section 20.

Mr. Thanu Pillai.—I beg to propose that the following Explanation be added to this section:—

Explanation.—Separable offences which come within the provisions of section 60 of the Penal Code are not distinct offences within the meaning of this section.

Illustration.

A breaks into a house with intent to commit theft and steals property therein. A has not committed distinct offences.

This will make the law more clear in respect of the difference between separable offences dealt with under section 60 of the Penal Code and other offences for which separate additional sentences may be passed beyond the ordinary powers of a Magistrate.

Seconded by Mr. Rajaram Row.

Carried.

Section 25.

Mr. Thanu Pillai.—I beg to propose that the following be substituted for this section:—

"Every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Penal Code, namely, 111, 112, 113, 114, 115, 116, 117, 118, 119, 123, 135, 136, 137, 139, 140, 301, 302, 303, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 436, 437, 451, 452, 458, 459, 460, 461 and 462, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police officer of such commission or intention.

For the purposes of this section, the term 'offence' includes any act committed in British India or in any Native State under the Suzerainty of Her Majesty the Queen-Empress, which would constitute an offence if committed in Travancore."

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The whole section is redrafted for the sake of clearness. We have again followed the British Code. In para 2, I have substituted the words "in British India or in any Native State under the Suzerainty of Her Majesty the Queen-Empress" for "at any place out of Travancore" which occurs in the Bill as amended by the Select Committee. The reason for this alteration cannot, I think, be better stated than in the words of the High Court. They observe :—

"The liability sought to be imposed upon the Travancore subjects by the proposed amendments embodied in sections 3 and 4 of the Bill is very serious; but this liability, the imposition of which is warranted by the necessity of meeting international obligations, need not be carried far beyond the actual requirements. * * * The wording of the sections as at present stands—"any place out of Travancore"—is too wide and would render it obligatory on the part of the public to give information in respect of offences committed in any part of the world, for which the offender is not, under any law or usage relating to extradition, liable to be arrested or detained in custody in Travancore. These sections are a reproduction of the sections 1 and 2 of the British Indian Act III of 1894. But the British Indian Government is under international obligations to most of the civilized world. The circumstances of this State are different."

Seconded by Mr. Rajaram Row.

Mr. Nagam Aiya.—You have now put in 37 sections while in the Code there are only 31 sections. In the British section there are only 36 offences mentioned.

Mr. Thanu Pillai.—We have put in all the sections in the latest British Code together with the new section, 111, of our Penal Code.

Mr. Nagam Aiya.—I oppose the amendment, on the ground that we should not increase the number of crimes in the country and thus needlessly add to the responsibilities of our quiet population. I think it will be sufficient to adhere to the 31 sections already in the Code or rather 32 sections including the new section 111 of the Penal Code. I would omit sections 135, 136, 137, 139 and 140. Let us wait for some time and watch the operation of the new Procedure Code in British India, and after which, if we find it necessary, we can introduce the additional sections. There is no special advantage in introducing them now. We can take time. We have not suffered by not having these sections. Therefore, I would ask the Council to drop these 5 sections.

Mr. Kuruvila.—I am disposed to agree with Mr. Nagam Aiya in insisting upon the exclusion of these sections. We are creating a positive duty on the subjects to give information to the Police.

Mr. Nagam Aiya's amendment being put to the vote was lost, and the original motion carried by majority.

Sections IV and VI of the Bill—Sections 26 and 35 of the Code.

Mr. Thanu Pillai.—For the reasons already explained, I beg to propose that the words "in British India or in any Native State under the Suzerainty of Her Majesty the Queen Empress" be substituted for "at any place out of Travancore."

Seconded by Mr. Prince.

Carried.

Mr. Thanu Pillai.—In section IV of the Bill (section 26 of the Code) add the following after (*e*) :—

'(*f*) any matter likely to affect the maintenance of order, or the prevention of crime or the safety of person or property respecting which Our Government has by general or special order directed him to communicate information.'

This is taken from the British Act and is necessary in the interests of public peace.

Seconded by Mr. Kuruvila.

Carried.

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Mr. Thanu Pillai.—In clause (*e*) and explanation II (in section IV of the Bill), insert the figure "111" before "301". This is necessary in view of the new section 111 in our Penal Code.

Seconded by Mr. Kochu Krishna Marar.

Carried.

Section 38.

Mr. Thanu Pillai.—I beg to propose that the section be recast as follows:—

"When any person who, in the presence of a Police Officer, has committed or has been accused of committing a non-cognizable offence, refuses on demand of such officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained.

When the true name and residence of such person have been ascertained, he shall be released on his executing a bond with or without sureties to appear before a Magistrate, if so required. Provided, that if such person is not resident in Travancore, the bond shall be secured by a surety or sureties resident in Travancore.

Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest; or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction".

This deals with the procedure of the Police in regard to persons who commit non-cognizable offences. The amendment contains no material modification of the original section. The only matter that perhaps should be brought to the notice of the Council is the proviso to the second para, which is not in our Code. It is self-explanatory.

Seconded by Mr. Prince.

Carried.

Section 61.

Mr. Thanu Pillai.—I beg to propose that the following be added to the section:—

"Any Police Officer executing a warrant under this section may take security for appearance as provided in section 58".

This is altogether new. It is not in the British Act and has been put in on the suggestion of a very experienced Police Officer. My own experience bears out this suggestion. The Magistrate issues his warrant ordinarily to the Station House Officer and the latter endorses it to a constable, who actually executes the warrant. It may be that the warrant contains an endorsement authorising the Station House Officer to accept bail. As the section now stands the constable to whom the warrant is entrusted for execution has no power to take bail, and is bound to march the arrested person to the Police Station, which may often be miles from the place of arrest. This is obviously a source of hardship to the public, especially to women. The amendment is intended to remedy this evil.

Seconded by Mr. Maltby.

Carried.

Section 70.

Mr. Thanu Pillai.—I would propose that between paras 4 and 5 the following be inserted:

"If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case, the proceeds of the sale shall abide the order of the Court."

Seconded by Mr. Kochukrishna Marar.

Carried.

Sections 76, 77 and 78.

Mr. Thanu Pillai.—I would take these sections together, because the reason is the same in each case

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"In section 76, para 3, last line, insert the words "or any parcel or thing" between "document" and "in."

In section 77, insert "parcel or thing" between "document" and "in" in the 1st line, and between "document" and "before" in the 5th line, of the 1st para; and between "document" and "is" in the 1st line, and between "document" and "pending" in the 3rd line, of the 2nd para.

In section 78, last para, insert the words "parcel or other thing" between "document" and "in."

The object is to enable search-warrants being issued for postal articles. The words are taken from the British Act.

Seconded by Mr. Prince.

Carried.

Section 84.

Mr. Thanu Pillai.—I would add the following as the last para to section 84:—

"Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 33 shall be observed."

This is also taken from the British Act and is intended to make the search-warrant more effective by enabling a search in the cases contemplated by the new provision. Women are specially protected.

Seconded by Mr. Rajaram Row.

Carried.

Section 85.

Mr. Thanu Pillai.—I would propose the addition of the following as the last para:—

"When any person is searched under section 84, a list of all things taken possession of, shall be prepared and a copy thereof shall be delivered to such person at his request."

This is self-explanatory and contains a useful provision.

Seconded by Mr. Kuruvila.

Carried.

Section 89.

Mr. Thanu Pillai.—I propose that the following be added as the last para:—

"An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision."

This is taken from British Act and the reason is that doubts have been entertained by the British Indian Courts whether the Appellate Court or the High Court could exercise such power.

Seconded by Mr. Prince.

Carried.

Section 90.

Mr. Thanu Pillai.—I propose to add a new para to this section:—

"Proceedings shall not be taken under this section, unless the person informed against is within the local limits of such Magistrate's jurisdiction."

The section deals with security for keeping the peace in certain cases. The peron against whom proceedings are instituted may be either within or without the local limits of the Magistrate's jurisdiction. Under section 90, it will be open to the District Magistrate of Padmanabhapuram or the 1st Class Magistrate to take proceedings against a person who may be living at Parur or Alengad. All that is required to be shown is that some person living at Parur or Alengad has instigated somebody within the jurisdiction of the Padmanabhapuram Magistrate to commit a breach of the peace. Now, the Tharananallur Nambooripad has immovable property in the Padmanabhapuram District. To annoy him, some man at Padmanabhapuram may give information to the local Magistrate that a breach of the peace is

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impending and it will be open to the Magistrate to take action against the Namboori-pad. The object of the amendment is to confine the power to the ordinary local jurisdiction of the District or 1st Class Magistrate. If the man resides outside his jurisdiction, let the Magistrate of that place take cognizance of the matter and deal with him. I must explain that in the British Act the provisions are slightly different. There the power is given to the District Magistrate over persons who may be living anywhere in British India. The matter formed the subject of much discussion in the Viceregal Council. Some of the non-official and official members protested against the amendment but it was carried by majority. Whatever may be the reasons applicable to British India, I do not think there will be any practical objection in this country to the amendment I propose.

Seconded by Mr. Prince.

After some discussion the motion was put and agreed to.

Section 93.

Mr. Thanu Pillai.—I would substitute the following for the present section :—

"Whenever a District Magistrate or a Magistrate of the First Class receives information that any person within the local limits of his jurisdiction :—

(*a*) is by habit a robber, house-breaker or thief, or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen, or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

(*d*) habitually commits mischief, extortion or cheating, or counterfeiting coin, currency-notes or stamps, or attempts so to do, or

(*e*) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix."

You will find that the new section is in some respects an improvement upon the old.

Seconded by Mr. Prince.

Carried.

Section 106.

Mr. Thanu Pillai.—I would put in the following between the 3rd and 4th paras :—

"If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order and shall await the orders of such Court or Magistrate."

This requires very little explanation. This too is taken from the British Code.

Seconded by Mr. Kuruvila.

Carried.

Section 107.

Mr. Thanu Pillai.—I propose to insert a new para between paras 1 and 2 :—

"Whenever any person has been imprisoned for failing to give security under this Chapter, the District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security, or the number of sureties or the time for which security has been required."

This gives power to the District Magistrate to reduce the security if it is found that the person who is under-going imprisonment for not having furnished security, was not able to furnish it because the security was heavy. It is just possible that a security of Rs. 5,000 is demanded of a man, who is unable to find a surety or to deposit the amount. Such a man will go to jail. If afterwards the District Magistrate finds that the man is under-going imprisonment because of the heaviness of

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the security demanded, he may reduce it, say to Rs. 500, and the man may then be able to deposit the amount or find a surety.

Seconded by Mr. Nagam Aiya.

Carried.

Section 116.

Mr. Thanu Pillai.—I propose to insert the words "or tree" between "building" and "is" in the 5th para, and between "building" and "substance" in the 7th para and to insert between the 9th and 10th lines of the 7th para, the words "to remove such tree, or."

This is a new amendment, not to be found in the British Act. In this land of cocoanut trees a provision to remove such nuisance is very necessary. If a building can be knocked down in the interests of public safety I do not see why a tree should not be cut down.

Seconded by Mr. Prince.

Carried.

Section 128.

Mr Thanu Pillai.—I beg to propose that the following be substituted for the present section.

"(1) Whenever a District Magistrate or Magistrate of the First class is satisfied from a Police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops, or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Inquiry as to possesion.

Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:

Provided also, that if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) If the Magistrate decides that one of the parties was in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Party in possession to retain possession until legally evicted.

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(7) Proceedings under this section shall not abate by reason only of the death of any of the parties thereto."

I have simply adopted the British section and you will find that it is a great improvement in many respects. In the existing section we have the expression 'tangible immovable property.' It is a very indefinite expression and has given rise to endless discussion in British India. The words "land or water or the boundaries thereof" have accordingly been substituted. Para 2 contains a convenient definition of the expression "land or water." There is one point on which there may perhaps be difference of opinion, *viz.*, the time with reference to which the possession is to be considered by the Magistrate. Under the existing law it is the time the dispute arose. Under the new section, Clause (4), an arbitrary rule has been adopted. The date of the order is of course intelligible, but the period of two months fixed is arbitrary. I know that under the amended section there may be some practical hardship. A Magistrate acting under this section may in some cases have to confirm the possession of a trespasser. It is not always that the person forcibly dispossessed seeks immediate redress at the hands of the Magistrate. The parties and their friends may try to settle matters amicably and take time to obtain the advice of their vakils. More than two months may pass by, in which case, if the party is subsequently driven to the necessity of seeking the intervention of the Magistrate, the possession may have to be found in favor of the trespasser. This aspect of the case was forcibly argued in the Viceregal Council, but on carefully reading the discussions which extended to about 25 pages in print, I, for my part, think that the section as adopted by them is, on the whole, the best.

Seconded by Mr. Prince.

Mr. Nagam Aiya.—I would propose that we put in "two months before the date of dispute" for "two months next before the date of such order." It may be that the case is kept on in the Magistrate's Court for a month or two. It may also be that there was considerable delay in the submission of the Police report, in which case, the wrongful party might benefit and the rightful owner who has been wrongfully dispossessed might suffer. According to the amendment proposed, the possession of a trespasser may have to be confirmed. This I think should be avoided.

President.—The order referred to is the preliminary order under the 1st para of the new section. The party who was in possession within two months preceding such order, will be entitled to recover his lost possession. The preliminary order is generally passed soon after the presentation of the complaint. No person forcibly dispossessed will allow two months to elapse without seeking redress. In a very great majority of cases, the date of dispute will therefore be within two months next preceding the date of the preliminary order. The proposed amendment is not likely to cause mischief to the extent apprehended by Mr. Nagam Aiya. A Criminal Court would be usurping the jurisdiction of a Civil Court, if it took cognizance of forcible dispossessions committed more than two months preceding the date of enquiry.

Mr. Thanu Pillai.—This point formed the subject of hot discussion in the Viceregal Council. The Hon'ble Mr. Stevens proposed to substitute "the time when the dispute arose" for "date of the order before mentioned" and that the proviso we are now considering be omitted. It was strongly opposed by the Hon'ble Sir Henry Prinsep and the motion was eventually rejected. With the permission of the Council, I would read a few passages from the weighty speeches of the learned members who took part in the discussion. The Hon'ble Sir Henry Prinsep observed:—
"The object of section 145 is to prevent a breach of the peace, and it is only when that is imminent, that a Magistrate can interpose. His duty is then to remove the cause of dispute by affirming and maintaining actual possession found by him at the time of his interposition. And when he has done this his functions under section 145 are at an end. * * * It is actual possession that the Magistrate is to find and maintain and the law declares that this shall be without reference to the merits of any claims of any of the parties to a right to possess. These are matters distinctly reserved for consideration elsewhere."

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"There is the right of suit in a Civil Court which may be by a summary action known as a possessory action without reference to title to the property, as well as a suit to obtain possession on proof of title. Recourse can also be had by a complaint to the Magistrate, if there has been forcible dispossession attended by criminal force, and on proof of such an offence by conviction of the offender, a Magistrate is expressly empowered by section 522 of the Code to order the complainant to be restored to possession. In either of such cases, the Civil or Criminal Court will proceed to try a distinct issue raised by the plaintiff or complainant, in which the time and nature of the act of wrongful and forcible dispossession will be stated, and it will be for the party invoking the assistance of the Civil or Criminal Court, to prove the issue raised by him. * * * Again, the conferring of powers so as to alter the original object of enquiry, that is, actual possession at the time of the Magistrate's order interposing to prevent a breach of the peace and to enable a Magistrate to determine possession of an anterior date, without any limit of time and not on the complaint of any person who may have suffered, is, to my mind, offering a premium to suborning false evidence to be adduced after the proceedings have commenced and, indeed, after the evidence of the opposite side may have been taken. It will also tend to offer additional temptations to a corrupt police to assist in establishing a new case set up as an after-thought even as a forlorn hope."

The Honorable Mr. Nicholson said:—

"Instead of possession at a particular and recent period, it is possession at an indefinite period, *viz.*, the beginning of the dispute, that would have to be decided. Such beginning may have been and often is many years before, and the parties to a dispute may be merely the successors in interest of the original disputants: how are we to go back to some remote possession? Moreover, it is precisely here that the chief objection lies, *viz.*, that the Magistrate will no longer be concerned in deciding who is in *de facto* possession, but who was, once upon a time, the possessor and consequently, who should be now the proper possessor: in other words, it will not be who is, but who ought to be, in possession: the enquiry will not be into questions of possession but into questions of title. That is not the object of the power given to Magistrates under Chapter XII."

After some discussion, the motion was carried, Mr. Nagam Aiya voting against it.

Section 129.

Mr. Thanu Pillai.—I beg to propose the addition of the following as 2nd para:—

"When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure."

This provision is intended to remedy the difficulty in managing the property attached. It applies the rule already existing in regard to property attached under section 70.

Seconded by Mr. Prince.

Carried.

Section 130.

Mr. Thanu Pillai.—In this section, I propose to substitute for the words "to do or prevent the doing of anything in or upon any tangible immovable property situate" in lines 3 and 4, the words "of use of any land or water (including any right of way or easement over the same);" in the 2nd para, to insert the words "or on particular occasions" after "seasons," and to substitute the words "last of such seasons or occasions" for the words "season next."

This makes the wording clearer and is in conformity with the other amendments already passed.

Seconded by Mr. Prince.

Carried.

Section 138.

Mr. Thanu Pillai.—I beg to move the addition of the following as the last para to this section:—

"Any Magistrate referred to in section 170 may order such an investigation as above mentioned."

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I think my friends who are Magistrates will agree with me as to the need for this amendment. As the law now stands, Magistrates have no power to refer cognizable cases to the Police for investigation except under section 180 which only applies to complaints, the truth of which the Magistrates have reason to suspect. As a matter of fact, however, Magistrates do send such complaints, but the procedure is strictly irregular. The complaints in serious cases, such as robbery and murder, are not infrequently taken to Magistrates in the first instance. A preliminary investigation by the Police in such cases is essential, and there is no reason why the Magistrates, receiving the complaints should not be authorized to refer them to the Police for investigation.

Seconded by Mr. Maltby.

Carried.

Section 143.

Mr. Thanu Pillai.—I beg to propose that the following be substituted for this section :—

"Any Police Officer making an investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture."

This is the wording of the section as now modified by the British Act. There is no material modification in the first para; but the word 'truly' has been omitted in the second para. The object of the amendment is best explained in the words of the Select Committee of the Supreme Legislative Council on the Bill which became Act V of 1898. "We have amended this clause by reverting to the law as it stood under the Codes of 1861 and 1872. Under those Codes a person examined by a Police-Officer was bound to answer all material questions, but was not liable to be prosecuted for giving false evidence in respect of his answers under section 193 of the Indian Penal Code (see I. L. R, 7 Cal. 121 and 10 Cal. 405). It seems to us unfair that a man should be liable to be convicted of giving false evidence on the strength or by the aid of a statement supposed to have been given to a Police Officer, but which is not given on oath, which he has not signed, and which he has had no opportunity of verifying. Such statements may be hurriedly taken down as rough notes, the Police Officer is not trained in taking evidence, and the notes are often faired out by another officer. They bear no resemblance to depositions, and ought to have no weight as such attached to them. We are aware that there are inconveniences in abolishing the direct liability for giving false evidence to the police, but the balance of expediency seems to us to be in favour of the old law. The provisions of sections 202 and 203 of the Indian Penal Code appear to us to afford a sufficient safe-guard against false information." I would only add that the picture of the manner in which statements are recorded by investigating officers is by no means overdrawn. The investigating officer is often in the midst of a motley crowd, interrogates several persons at a time, jots down what they say or what suits his purpose, and elaborates the script at leisure with such additions and improvements as may seem advisable to render the evidence conformable to what in his opinion it should be. It is dangerous to allow statements of this kind being made the basis of a criminal prosecution.

Mr. Nagam Aiya.—I second the proposition. I am clearly of opinion that the word "truly" should be omitted from the section. No person should be liable to prosecution for perjury for a statement he may have given before a Police Officer. It is extremely unsafe to the public that such serious consequences should follow the notes made by a Policeman. There are none of the guarantees in the records made by the Police which ordinarily exist for the accuracy of statements made in Criminal Courts. Sometimes we follow the British Code and sometimes we lag behind them. In this matter the British Code has taken a real step in advance of their old law and dropped the word "truly" after considerable experience of the working of their old Criminal Procedure Code there, from which we adopted the word. It behoves us to follow suit now and drop the word 'truly' as I feel convinced that it might cause unnecessary harm. I trust the Council remembers my strong protest against the word "truly" in the Departmental Enquiries Bill we have recently passed.

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Mr. Prince.—I find the proposed amendment leaves out the words and may reduce into writing any statement made by the person so examined in the 1st para, and word "truly" in the 2nd para. I do not see why the power to reduce the statement to writing which has done no harm should be taken away. With regard to the omission of the word "truly," it seems to me that the amendment proposed would have the effect of telling the public that, in answering questions put to them by the Police, they may put in as many falsehoods as they can. That would be the impression left on the general public and will have a very bad effect. I strongly oppose it. I would also retain the power of committing statements to writing, in the 1st para.

Mr. Maltby.—I am disposed to agree with Mr. Prince that the section of the present code should be left unchanged.

Mr. Thanu Pillai.—I beg to be permitted to say a word in explanation of the amendment. There are two points raised by my friend, Mr. Prince. The first is that he does not understand why the power to reduce a statement into writing is taken away. My answer is that it is not intended to prevent the Police from making a memorandum of what the witnesses tell them. On the contrary they are expected to make such memorandum as will be apparent from the next following section. The words proposed to be omitted are mere surplusage.

Secondly:—He objects to the omission of the word 'truly' on the ground that it will have a demoralizing effect. I must say that my friend has wrongly stated the object of the amendment. The omission of the word 'truly' does not at all mean that we authorize or do not discountenance mendacity. We expect every man to speak the truth at all times and under all circumstances, and the obligation is certainly not weakened by the fact that the person spoken to is a Police Officer. What the amendment aims at is the protection not of the liar but of the innocent. As I have already pointed out, the circumstances under which Police statements are generally recorded are such as do not afford sufficient guarantee for the accuracy of those statements. The effect of the legal obligation to speak the truth which the retention of the word 'truly' involves would be to pin the person whose words the statement purports to be, down to such statement even though it be materially different from what he had stated. For, should he venture to give a contradictory statement on oath at a later stage, he throws himself open to a prosecution for perjury. All that is needed, I believe, is to prove his previous statement—not the truth of the facts contained therein, but the fact of the statement having been made by him. Doubtless, the Courts may require better proof of the previous statement than the testimony of the Police Officer who recorded it; but there will be no dearth of corroborative evidence. Anyhow a witness is not likely to risk a prosecution by contradicting what he knows or is told would be produced as his previous statement. He would naturally conform to it, though it may be the reverse of truth. What is the consequence? An innocent man is convicted on false testimony.

The proposed amendment would greatly minimise, if it does not altogether remove, the evil indicated above. At the same time, it affords no protection to those who give false information to the Police. Any person who withholds information from or gives false information to the Police regarding any offence can be prosecuted under sections 202 and 203 of the Indian Penal Code. Here, however, the prosecution has to prove not only that the previous statement was made by the person concerned, but that the information therein contained was incorrect or false and that the person knew or had reason to believe it to be such.

Mr. Prince.—You are not to give information in all cases but only in some. But, as regards necessary questions, you are bound to answer them.

Mr. Thanu Pillai.—I think the section we are considering creates a legal obligation to furnish information to the Police regarding all offences, and sections 202 and 203 of the Penal Code are sufficiently comprehensive.

President.—About the alternative charge based on contradictory statements, the Courts are not agreed in their view. Some Courts have held that when a person is charged with perjury, a particular statement should be positively shown to be false.

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This appears to be the opinion of the larger number of judges. When a statement recorded by the Police comes before the Courts, they are not likely to treat it in the same manner as the statement taken before a Magistrate. The retention of the word 'truly' is not, therefore, likely to cause serious hardship, nor am I aware of any evil results caused by the present law. During my long judicial career, I did not come across a single case in which a witness was charged with perjury for making false statements to the Police. The demoralization to which the omission of the word 'truly' would give rise, should not be lost sight of. It is much better not to require a witness to answer questions put to him by Police Officers than to tell him that he need not speak the truth. If notwithstanding the omission of the word 'truly', the witness is bound to give true information to the Police Officer, the retention of the word can do no harm. I would leave the section as it is now in our Criminal Procedure Code.

After some further discussion, the motion was put to the vote.

For	*Against*
Mr. Thanu Pillai	Mr. Prince
„ Nagam Aiya	„ Maltby
„ Kuruvila	„ Rajaram Row.
„ Kochu Krishna Marar.	

It was lost by the casting vote of the President.

Section 144.

Mr. Thanu Pillai.—I beg to propose that the following be substituted for the present section :—"No statement, other than a dying declaration, made by any person to a Police Officer in the course of an investigation under this Chapter shall, if taken down in writing, be signed by the person making it nor shall such writing be used as evidence :

"Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid, the Court shall, on the request of the accused, refer to such writing and may then, if the Court think it expedient in the interests of justice, direct that the accused be furnished with a copy thereof and such statement may be used to impeach the credit of such witness."

This is also taken from the British Act. The following extract from the Select Committee's report already referred to will explain the object of the amended section :—

"This clause, as drafted, proposed to affirm the decision of the Allahabad High Court, which was in conflict with the decision of the Calcutta High Court. The Governments of Bengal, the North-western Provinces, Madras, Bombay and Burma and most of the authorities consulted approve the decision of the Allahabad High Court, but the question involved (namely, whether the accused is entitled to inspect statements taken down by the Police under section 161) is full of difficulty. In the first place, it is essential in the interests of public justice that the sources of Police information should be kept secret. If the names of informers or detectives and the nature of their information be disclosed, the detection of crime would be seriously crippled. In the second place, it is unfair to a witness that his evidence should be discredited on the strength of an alleged statement made to a policeman, which he may have had no opportunity of verifying or correcting. Such statements must necessarily be often taken down hurriedly and may be incorrectly copied out. They are not taken down as depositions, or with regard to the rules of evidence, but merely to aid the police in the course of their investigation. But, in the third place, it may be most important for the accused to show that a witness called for the prosecution is telling a story substantially different from that which he told when first questioned by the police. We have endeavoured to reconcile these conflicting interests, by reverting to the language of the Codes of 1861 and 1872 and adding a proviso, compelling the Court, on the application of the accused, to refer to such statements and then empowering it in its discretion to allow him to have copies of them. We then provide for the mode in which these statements are to be used. It is clear that a witness ought not to have his credit impeached on the strength of a statement alleged to have been made to a policeman unless and until it is shown that he has made that statement."

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It is open to the presiding Magistrate to call for the statements of witnesses before the Police. He may look into those statements and if he finds there some contradictions he can cross-examine the witnesses with reference to those statements. The accused has in that case the right of asking the Court to refer to such statements and also to apply for copies.

Seconded by Mr. Prince.

Carried.

Section 146.

Mr. Thanu Pillai.—I would move the addition of the following Explanation:—

"*Explanation.*—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case."

This will make the meaning of the section clear.

Seconded by Mr. Maltby.

Carried.

Section 149.

Mr. Thanu Pillai.—In this section, I would propose the insertion of the words "on the whole" after "fifteen days." The question is, whether the section as it now stands authorises the granting of remands successively for fifteen days at a time. The Travancore High Court has ruled that the time is fifteen days on the whole. I know from personal experience that this causes serious inconvenience in certain cases. It is not always possible for the Police to close the investigation within 15 days. But to keep a man in custody for an indefinite period during Police investigation is a very serious matter. The substantive punishment itself may, in some cases, be less than fifteen days. I know cases of this sort. I am, therefore, for limiting the period to fifteen days on the whole. Practically the Police can get over the difficulty by placing the case before the Magistrate and obtaining remand for such further period as may be necessary.

Mr. Rajaram Row.—I second the proposition.

Mr. Prince.—It is very necessary in some cases that the man should be detained for more than fifteen days for Police investigation. The amendment proposed will, I am afraid, handicap the Police considerably. I am therefore against it.

Carried by majority, Mr. Prince voting against the motion.

Section 174 (X of the Bill.)

Mr. Thanu Pillai.—I propose to add section 508 of the Penal Code to the sections put in by the Select Committee. This is also in keeping with the section in the British Act.

Seconded by Mr. Prince.

Carried.

Section 181.

Mr. Thanu Pillai.—I would move the addition of the following:—

"In such case he shall briefly record his reasons for so doing."

This is taken from the British Act.

Seconded by Mr. Kochu Krishna Marar.

Carried.

Section 182.

Mr. Thanu Pillai.— I propose to add a new para in this section:—

"When by any law for the time being in force, any process fees or other fees are payable, no process shall be issued until the fees are paid, and if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint."

This is self-explanatory.

Seconded by Mr. Prince.

Carried.

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Section 191.

Mr. Thanu Pillai.—I beg to propose that the following be added as 2nd para :—

" If the Magistrate, after hearing the witnesses for the defence is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused."

This is also taken from the British Act. The object is to empower a Magistrate after closing the prosecution and formally charging the prisoner, to cancel the charge if on examination of the defence evidence under section 190, he finds that there is no case against the accused. Having given him the power of taking such evidence, it is necessary to give him also the power of cancelling the charge. Without this, the power of summoning and examining defence witnesses is meaningless.

Seconded by Mr. Maltby.

Mr. Kochu Krishna Marar.—This is practically allowing the Magistrate to try the case. By the mere fact that he is allowed to take down defence evidence, he cannot take any step on such evidence. I am afraid the amendment would give the Magistrate power to try the case which under the law he is not to try.

Mr. Maltby.—He only cancels the charge.

Mr. Kochu Krishna Marar.—In this way, he decides the case.

President.—When a Magistrate has come to the conclusion that the accused is innocent, why should he commit him to the Court of Session ? The power which the committing Magistrate now possesses, of recording evidence for defence, *implies* that the Magistrate may act upon such evidence. The proposed amendment simply makes this clear.

Mr. Thanu Pillai.—When the Magistrate has the power to take evidence, I do not see why he should not act upon the evidence. It should be remembered the Code provides for cases of improper discharge.

Mr. Rajaram Row.—An actual case arose the other day. A Magistrate formally charged the prisoner and told him he was to go to the Sessions. Subsequently he examined the defence witnesses and found that the charge could not stand and let the man go. Under the present Code, he was of course wrong and I had to report the case for the orders of the High Court. It seems to me the power given by the amendment is necessary.

On being put to the vote, the motion was carried by majority, Mr. Kochu Krishna Marar voting against it.

Section 199.

Mr. Thanu Pillai.—I beg to move that the following be added to the section as para 2 :—

" When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of an offence within the meaning of section 211.

Provided that the time included between the first and last of such dates shall not exceed one year."

The object of the amendment is this. There may be cases of embezzlement running over a long time, say a year. Take the case of a Proverticar. When you examine the treasury you may find the actual balance different from what the account shows. It is impossible for anybody to say on which particular day or days the embezzlement took place. All that you can say is that a particular amount is missing on the whole. Under the present law, no prosecution can stand unless you are able to prove specifically that a particular sum was misappropriated at a particular time. It is to prevent any failure of justice on account of this technical difficulty that the amendment is proposed.

Seconded by Mr. Prince.

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Mr. Kuruvila.—The old section says "as are reasonably sufficient to give the accused notice of the matter with which he is charged." I believe therefore that absolute exactness is not required.

Mr. Thanu Pillai.—I may inform my friend that, in some cases, the High Courts in British India have had to acquit accused persons merely on the ground of the charge being technically defective.

Carried.

Sections 204 and 208.

Mr. Thanu Pillai.—I would take these sections together.

"In section 204, insert the words "or add to" between "alter" and "any."

In section 208, insert the words "or added to" between "altered" and "by" in the 1st line, and the words "or addition" after "alteration" in the 3rd line; and add at the end of the section, the words "and also to call any further witness whom the Court may think to be material."

This is also based on a technical interpretation, that 'alteration' does not include 'addition.'

Seconded by Mr. Prince.

Carried.

Section 214.

Mr. Thanu Pillai.—I propose to add the following as 2nd para:—

"When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged."

This provision is, I believe, self-explanatory.

Seconded by Mr. Prince.

Carried.

Section 224.

Mr Thanu Pillai.—I would propose the addition of the following proviso:—

"Provided that where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case."

The object of the amendment is, I believe, clear. In cases under special laws *e. g.* Stamps, Forest, Abkari &c., the prosecuting official may not always find it convenient to attend the Magistrate's Court on the date fixed, owing to his legitimate duties elsewhere. Under the proviso the absence of the complainant where he is a public servant is no bar to proceeding with the case. The provision is necessary more in the interests of the public than of public servants. For as observed by the Hon'ble Mr. Nicholson in the Supreme Council, "in forest, excise and similar cases a greater number of unnecessary adjournments are given by Magistrates, with infinite annoyance and expense to parties and witnesses, simply because the complaining officer, who may have no direct knowledge of the affair, is not present, being detained by public duty elsewhere."

Seconded by Mr. Prince.

Carried.

Section 227.

Mr. Thanu Pillai.—I beg to propose the following modifications in this section:—

(1) Between the 1st and the 2nd para, insert the following proviso:—

"Provided that, before making any such direction, the Magistrate shall—

(*a*) record and consider any objection which the complainant may urge against the making of the direction, and,

(*b*) if the Magistrate directs any compensation to be paid, state in writing in his order of acquittal, his reasons for awarding the compensation.

(2) Between the 2nd and 3rd paras, insert the following two paras:

"A complainant who has been ordered under the first para of this section by a Magistrate of the Second or Third class to pay compensation to an accused person

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may appeal from the order, in so far as the order relates to the payment of compensation, as if such complainant had been convicted on a trial held by such Magistrate.

Where an order for payment of compensation is made in a case which is subject to appeal under the last preceding para, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or if an appeal is presented, before the appeal has been decided."

(3) In the first line of the last para substitute the words. "If on appeal or revision, the appellate or High Court" for the words "if on revision the High Court."

The corresponding section of the British Act extends the power of awarding compensation to warrant cases also. The High Court have recommended the adoption of that section *in toto*. But on giving the matter my best consideration it seems to me that the special provisions contained in this section should be restricted to summons cases. The power to award compensation in any case is, to my mind, one of questionable expediency, and I strongly deprecate its extension to all cases. The Penal Code provides ample remedy for false and malicious complaints. With a view to provide some safeguard against abuse of the power, I have adopted such of the provisions of the British section as are necessary for this purpose. The right of appeal is, as observed by the High Court, "specially valuable."

Seconded by Mr. Maltby.

Carried.

Mr. Prince.—I beg to propose that in the first para of this section the words "not exceeding fifty rupees" be omitted and the words "provided that such compensation shall not in any case exceed fifty rupees on the whole" be added at the end.

Considering the scope for abuse in the exercise of this power, I think it necessary to restrict it to fifty rupees on the whole. The spirit of the amendment is in line with the observations made by my friend Mr. Thanu Pillai.

Mr. Rajaram Row.—I second the proposal. I consider it very necessary.

Carried.

Section 233.

Mr. Thanu Pillai.—I would substitute the following for the present section:—

"If the accused refuses to plead or does not plead or claims to be tried, he shall be required to state whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be recalled, and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

If the accused puts in any written statement, the Magistrate shall file it with the record."

This is the modified section now adopted in the British Act.

Seconded by Mr. Prince.

Carried.

Section 234.

Mr. Thanu Pillai.—I beg to propose the addition of the following after the 1st para:—

"Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice."

Here too I have simply adopted the British section. The object of the amendment is to prevent the accused or his vakil from abusing the privilege of recalling and re-examining the witnesses for the prosecution. As we have already given him the privilege under the preceding section, the proposed restriction cannot be considered a hardship.

Seconded by Mr. Prince.

Carried.

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Section 256.

Mr. Thanu Pillai.—I have 3 amendments to propose in this section. The first is to insert the words "or the person by whom the prosecution has been started" after "caused" in the 6th line of the 2nd para.

These words are necessary because of the addition of a new section (405 of the Penal Code) in the list of compoundable offences.

Seconded by Mr. Maltby.

Carried.

Mr. Thanu Pillai.—My next amendment is to insert the following between the 4th and 5th paras:—

"When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard".

I am aware that the High Court have expressed their opinion against the expediency of allowing a compromise before an appellate court. But the amendment proposed gives full discretion to the Court to accept such compromise or not, and I think it contains an useful and wholesome provision.

It has been adopted in the British Act.

Seconded by Mr. Kuruvila.

Carried.

Mr. Thanu Pillai.—My last amendment in this section is:—

Omit the words "not mentioned in this section" in the 6th para and insert the words "except as provided by this section" after "compounded."

This is purely verbal.

Seconded by Mr. Prince.

Carried.

Section 272.

Mr. Thanu Pillai.—I propose in this section to insert between "pronounced" and "in" in line 2, the words "or the substance of such judgment shall be explained."

The object of this amendment is, in the words of the High Court, "to admit of the judgments being pronounced by explaining the substance thereof in open court, instead of reading out the whole judgment which entails a needless waste of time."

Seconded by Mr. Rajaram Row.

Carried.

Section 292.

Mr. Thanu Pillai.—I would substitute for the words "in the way of school discipline with a light rattan" the words "in such mode on such part of the person and with such instrument as Our Government may direct." The former expression is indefinite. What is meant by school discipline is nowhere defined. The words of the amendment are taken from the British Act.

Seconded by Mr. Prince.

Carried.

Section 318 (XVII of the Bill).

Mr. Thanu Pillai.—I beg to move that a clause (*d*) be added:

(*d*) make any amendment or any consequential or incidential order that may be just or proper.

This is consequent upon the amendment already passed in section 89.

Seconded by Mr. Kuruvila.

Carried.

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Section 325.

Mr. Thanu Pillai.—I would propose that the words "except an appeal from a sentence of fine" be inserted between "Chapter" and "shall."

This is an important amendment. I knew a case in this country where a man was fined Rs. 5,000. Supposing the man dies after the presentation of the appeal and before its disposal, there is no reason so far as the fine is concerned why the appeal should not be proceeded with and disposed of in due course. I may add that the words are taken from the British Act.

Seconded by Mr. Maltby.

Carried.

Section XIX of the Bill (Section 359).

Mr. Thanu Pillai.—I have to propose a few verbal amendments:—

Omit the words "born", between "British" and "subject." Substitute "this" for "the Criminal Procedure" and "the last preceding para" for "para 3."

Seconded by Mr. Prince.

Carried.

Section 366.

Mr. Thanu Pillai.—In this section I beg to propose the following amendment:—

(1) In para 2, insert after "order" the words "or if so ordered from the date of the application for maintenance."

(2) In the proviso, add the words "or that there is just ground for so doing" at the end.

(3) Add the following at the end of the section:—

"Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof.

The accused may tender himself as a witness, and in such case shall be examined as such.

The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

The accused may be proceeded against in any district where he resides or is, or where he last resided with his wife, or as the case may be, the mother of the illegitimate child."

These amendments are all adopted from the British Act and are in amplification of the present section.

Seconded by Mr. Rajaram Row.

Carried.

Section 392.

Mr. Thanu Pillai.—I beg to move that the following be added as the last para:—

"Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety."

This also is an useful provision taken from the British Act.

Seconded by Mr. Prince.

Carried.

Section 398.

Mr. Thanu Pillai.—I would add at the end of the section the words, "and make any further order that may be just."

Seconded by Mr Maltby.

Carried.

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Section XXII of the Bill. Section 400 of the Code.

Mr. Thanu Pillai.—I beg to propose the omission of section XXII of the Bill, in other words to retain the wording of section 400 of the Code. The question is whether power should be given to a Magistrate to pass an order regarding immovable property, even though he records an order of acquittal. The Select Committee are for giving him the power even in cases of acquittal. That will be lodging, I think, enormous power in the hands of the Magistrates. Many cases of criminal trespass are civil suits in disguise, the object of the complainants being to secure possession through the easy instrumentality of Criminal Courts. In the words of the High Court, the amendment proposed "would have the effect of converting the Magistracy and Criminal Courts into Civil tribunals, for the purpose of adjudicating upon the *factum* of possession."

Hence my proposal to retain the wording of the Code. The section, I may add, is left undisturbed in the British Act.

Seconded by Mr. Rajaram Row.

Mr. Prince opposed the motion.

The President:—The amendment made by the Select Committee simply enables the Court to give effect to its own finding on the question of forcible dispossession, whether the accused be convicted or acquitted. It will be mere waste of judicial power to require parties in a case of acquittal to seek possession by a Civil Court, while in cases of conviction, no such requisition is made.

After some discussion the motion was put to the vote.

For.	*Against.*
Mr. Thanu Pillai.	Mr. Prince.
„ Rajaram Row.	„ Maltby.
„ Nagam Aiya.	„ Kochu Krishna Marar.
„ Kuruvila.	

The motion was lost by the casting vote of the President.

Section 404.

Mr. Thanu Pillai.—I propose to add the following after the first para:—

"The High Court may act either on the report of the lower Court or on the application of a party interested, or on its own initiative.

Every application for the exercise of the power conferred by this section shall, be made by motion which shall, except when the applicant is the Head Sirkar Vakil, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties conditioned that he will, if convicted, pay the costs of the prosecutor."

This too is taken from the British Act and involves no question of principle.

Seconded by Mr. Kuruvila.

Carried.

Mr. Thanu Pillai.—I beg to propose that a new section (434) be added in the Code:—

When any person, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code, with imprisonment for a term of three years or upwards is again convicted of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards by a Court of Session or District Magistrate, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of imprisonment on such person, also order that his residence and any change of residence after release be notified, as hereinafter provided, for a term not exceeding five years from the date of the expiration of such sentence.

If such conviction is set aside on appeal or otherwise, such order shall become void.

Our Government may make rules to carry out the provisions of this section relating to the notification of residence by released convicts.

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Any person refusing or neglecting to comply with any rule so made shall be punishable as if he had committed an offence under section 169 of the Penal Code."

The provisions contained in this section are very useful and will enable the authorities to watch the movements of known offenders which is necessary in the interests of public safety and the prevention of crime.

This section has been newly introduced into the British Indian Act.

Seconded by Mr. Rajaram Row.

Carried.

Section XXIV of the Bill.

Mr. Thanu Pillai.—I would modify the section thus:—

The Schedules appended to this Regulation shall be substituted for the Schedules appended to the Code of Criminal Procedure (Regulation V of 1067).

This amendment is necessitated by the amendment which I shall presently move in Schedule I of Regulation V of 1067.

Seconded by Mr. Kuruvila.

Carried.

Schedule I.

Mr. Thanu Pillai.—At the end of this Schedule, I propose to add the following:—

Regulation II of 1052. — Criminal Breach of Contract. — Section 3.

The result of this amendment is that appeals in cases under the above Regulation will hereafter lie to the Sessions Court or the District Magistrate as the case may be, instead of to the High Court direct as the present law requires. The practical inconvenience of the existing provision has been pointed out by the High Court, and requires to be remedied. Hence the amendment.

Seconded by Mr. Prince.

Carried.

Schedule II appended to the Bill.

Mr. Thanu Pillai.—I have 3 amendments to propose in this Schedule.

(1) In column 7, against section 131, insert the words "of Rs. 500" after "fine".

(2) In column 8, against sections 457 and 460, substitute "Court of Session or Magistrate of the 1st class" for Court of Session or Magistrate of the 1st or 2nd class".

(3) In column 8, against 508, substitute "Magistrate of the 1st class" for "Magistrate of the first or second class."

These alterations are taken from the British Act.

Seconded by Mr. Prince.

Carried.

Section 366.

Mr. Kochu Krishna Marar.—With the permision of the President, I beg to propose an amendment to section 366, to make it applicable to Marumakathayees. The amendment is to add the following Explanation to the section:—

"*Explanation.*—The issue of a woman following the Marumakathayam law of inheritance and a man whether he be the follower of Makathayam law or any other law of inheritance is within the meaning of this section."

The proposal is not a new one. When the Criminal Procedure Code Regulation (V of 1067) was before this Council, this question came in for consideration. The opinion of the High Court Judges was taken and they were for retaining the provision. It was, I believe, omitted on the ground that this section strictly interpreted would apply to Marumakathayees. But some doubts are still entertained on the subject, and an explanation is therefore necessary.

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Mr. Prince.—I second the proposal. It involves a principle of natural justice.

Mr. Thanu Pillai.—My opinion is that the section as it now stands includes the cases contemplated by the explanation. But as some doubts have been expressed, I would support the insertion of the explanation.

Mr. Rajaram Row.—As the section conveys the same meaning, I do not think the explanation is necessary. I have no doubt about the applicability of the section to the cases referred to in the explanation.

Mr. Nagam Aiya.—I have no doubt either. The section as it stands does not in my opinion apply to Marumakathayam people. It is for the Council to consider whether its provisions should be extended to them. I am for leaving the section, as it is, undisturbed.

After some discussion, the motion was carried by majority.

Mr. Thanu Pillai.—I beg to move that the Bill as amended be read again on a future day of which notice shall be given.

The motion was put and agreed to.

The Council adjourned at 4-30 P. M.

K. KRISHNASWAMY RAO,
President.

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